

Affirmed and Memorandum Opinion filed January 13, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00199-CV

CRESCENT OAKS LP, Appellant

V.

HARRIS COUNTY APPRAISAL DISTRICT, Appellee

**On Appeal from the 127th District Court
Harris County, Texas
Trial Court Cause No. 2007-55042**

MEMORANDUM OPINION

Crescent Oaks LP appeals from the trial court's order granting Harris County Appraisal District's ("HCAD")¹ plea to the jurisdiction. We affirm.

¹ Crescent Oaks's pleadings and notice of appeal identify both HCAD and the Harris County Appraisal Review Board as defendants. Because the record does not indicate that the Appraisal Review Board was served or appeared in the suit and it was not a necessary party, we consider HCAD the only appellee properly before this court. *See Woodway Drive LLC v. Harris County Appraisal Dist.*, 311 S.W.3d 649, 651, n. 1 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

I. Factual and Procedural Background

The property at issue is located at 6718 DeMoss Drive in Houston. For tax year 2007, HCAD initially valued the subject property at a total value of \$11,998,288. Crescent Oaks appointed O'Connor & Associates, a tax consultant firm, to represent it in its protest of the 2007 valuation before the Harris County Appraisal Review Board. At the hearing, the Board agreed with the owner's opinion of the total value at \$8,977,760.

Despite this agreement, on September 10, 2007, Crescent Oaks filed an original petition in the trial court challenging the Review Board's determination. On December 16, 2009, HCAD filed a plea to the jurisdiction asserting that the trial court was precluded from determining the appeal because the Tax Code prohibits judicial review of a valuation agreement.

On January 27, 2010, the trial court granted HCAD's plea to the jurisdiction and dismissed the suit. In a two-part issue, Crescent Oaks argues that the trial court erred in granting the plea to the jurisdiction because (1) the pleadings and law conferred jurisdiction, and (2) jurisdiction cannot be determined on a disputed factual issue.

II. Standard of Review

We review a trial court's ruling on a plea to the jurisdiction *de novo*. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). In our review, we construe the pleadings liberally in favor of the pleader and look to the pleader's intent to determine whether the facts alleged affirmatively demonstrate the trial court's jurisdiction to hear the cause. *See id.* A defendant may prevail on a plea to the jurisdiction by demonstrating that, even if all the plaintiff's pleaded allegations are true, an incurable jurisdictional defect remains on the face of the pleadings that deprives the trial court of subject-matter jurisdiction. *Harris County Appraisal Dist. v. O'Connor & Assocs.*, 267 S.W.3d 413, 416 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

III. Analysis

Agreements pursuant to section Tax Code section 1.111(e)² are final and not subject to a property owner's statutory suit for judicial review under chapter 42 of the Tax Code. *MHCB (USA) Leasing & Finance Corp. v. Galveston Cent. Appraisal Dist.*, 249 S.W.3d 68, 83 (Tex. App.—Houston [1st Dist.] 2007, pet. denied). See Tex. Tax Code § 42.01(1)(A); *Sondock v. Harris County Appraisal Dist.*, 231 S.W.3d 65, 69-70 (Tex. App.—Houston [14th Dist.] 2007, no pet.); *BPAC Tex., L.P. v. Harris County Appraisal Dist.*, No. 01-03-01238-CV, 2004 WL 2422033, at *3 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (mem. op.). Crescent Oaks claims that its appeal is not precluded by the appraisal agreement because section 1.111(e) of the Tax Code requires the agreement to be between the property owner or the owner's agent and the chief appraiser. Crescent Oaks argues that it was not the chief appraiser for HCAD who appeared at the hearing, but a representative, and therefore there was no agreement with the chief appraiser.³

This court recently decided an appeal with almost identical facts and issues. See *KM TS Spring Cypress LLC v. Harris County Appraisal Dist.*, No. 14-09-00978-CV, 2010 WL 3921126 (Tex. App.—Houston [14th Dist.] Oct. 7, 2010, no pet.). Although the Tax Code requires the appearance of the chief appraiser at a protest hearing, it also allows the chief appraiser to delegate authority to his employees. See Tex. Tax Code §§ 6.05(e),

² Section 1.111(e) of the Tax Code provides that:

(e) An agreement between a property owner or the owner's agent and the chief appraiser is final if the agreement relates to a matter:

(1) which may be protested to the appraisal review board or on which a protest has been filed but not determined by the board; or

(2) which may be corrected under Section 25.25 or on which a motion for correction under that section has been filed but not determined by the board.

Tex. Tax Code § 1.111(e).

³ The record reflects Crescent Oaks made no objection at the protest hearing that the chief appraiser failed to appear.

41.45(c). The chief appraiser is not prohibited from delegating his authority to reach an agreement with a property owner.⁴ See *KM TS Spring Cypress*, at *1. We therefore reject Crescent Oaks’s claim that an agreement between a property owner and an HCAD representative appearing on behalf of the chief appraiser is not an agreement subject to section 1.111(e). See *id.*

Crescent Oaks also complains the trial court erred by granting the plea to the jurisdiction because the pleadings raised a disputed fact question as to whether there was an agreement with the chief appraiser. Crescent Oaks argues that the trial court erred by not allowing it to conduct discovery on this fact issue. HCAD acknowledges that a representative of HCAD, not the chief appraiser, appeared at the protest hearing. Thus, there is no disputed fact. See *KM TS Spring*, at *2. The dispute at issue in the case, whether an agreement between a property owner and a representative of the chief appraiser precludes an appeal, is a question of law. See *id.* Crescent Oaks’s argument is without merit.

Crescent Oaks also claims that to the extent section 1.111(e) precludes an appeal, it is unconstitutional and denies a property owner due process. The same issue was presented in *Sondock*. We overrule this contention for the reasons set forth in *Sondock*. See *Sondock*, 231 S.W.3d at 70.

Crescent Oaks also contends that by issuing two orders after the protest hearing, HCAD granted it the right to appeal. The orders were issued after the agreement had been

⁴ We note that in many cases an “HCAD representative” appeared at the protest hearing. See *Sondock*, 231 S.W.3d at 69 (at the protest hearing “HCAD’s representative” offered an opinion on the value of the property); *Loopser v. Harris County Appraisal Dist.*, No. 14-07-00956-CV, 2009 WL 2146151, at *1 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (mem.op.) (“HCAD’s representative” testified at the protest hearing to the property’s market value); *Prince v. Harris County Appraisal Dist.*, No. 14-07-00919-CV, 2009 WL 20975, at *1 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (mem.op.) (“an HCAD representative” appeared at the protest hearing); *Mann v. Harris County Appraisal Dist.*, No. 01-07-00436-CV, 2008 WL 1747807, at *1 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (mem.op.) (“[E.W.] represented HCAD’s chief appraiser at the protest hearing”).

reached.⁵ At the moment the agreement was reached, it became final. *See Sondock*, 231 S.W.3d at 69. That finality rendered any subsequent determinations by the Board regarding the value, such as any orders it entered, irrelevant. *See id.*; *see also* Tex. Tax Code § 1.111(e).

We overrule Crescent Oaks's issue, including its subsidiary arguments. We find that the trial court did not err in granting HCAD's plea to the jurisdiction and affirm the trial court's order.

PER CURIAM

Panel consists of Justices Brown, Boyce and Jamison.

⁵ The property had two tax accounts, and separate orders issued, with the total value that was agreed upon. Because the total value was agreed upon, the two accounts present no meaningful distinction between this case and those where the property is covered by a single account..